

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re,

Michael Jimmie Lagueux,

Debtor(s).

Michael Jimmie Lagueux,

Plaintiff(s),

v.

United States Department of Education,

Defendant(s).

C/A No. 18-04852-HB

Adv. Pro. No. 18-80088-HB

Chapter 7

**ORDER DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

**THIS MATTER** came before the Court for consideration of the Motion for Summary Judgment filed by Defendant United States Department of Education (“USDE”).<sup>1</sup> Plaintiff Michael Jimmie Lagueux filed this action seeking to discharge his student loans under 11 U.S.C. § 523(a)(8) due to disability. The USDE asserts summary judgment should be granted because Lagueux failed to exhaust his administrative remedies and seek a discharge of his student loans under the Federal Family Education Loan Program (“FFELP”), 20 U.S.C. § 1087(a). The USDE also asserts Lagueux’s failure to seek an administrative discharge prevents him from satisfying the *Brunner* test to demonstrate an “undue hardship” for the loan to be dischargeable under § 523(a)(8). *See Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2d Cir. 1987).

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<sup>1</sup> ECF No. 24, filed Aug. 6, 2019. Although the deadline to respond is August 21, 2019, Plaintiff filed an Objection on August 12, 2019, *see* ECF No. 31, and the Court promptly considered this matter.

Student loans are generally nondischargeable in bankruptcy. However, the Bankruptcy Code provides for a discharge if the debt “would impose an undue hardship on the debtor and the debtor’s dependents.” 11 U.S.C. § 523(a)(8). “Undue hardship” is not defined by the Code. Instead, the Fourth Circuit has adopted the three-part undue hardship test of *Brunner*, which sets forth the criteria a debtor must prove to obtain a discharge of student loans. See *Frushour v. Educ. Credit Mgmt. Corp. (In re Frushour)*, 433 F.3d 393, 398 (4th Cir. 2005). Under the *Brunner* test, to obtain an undue hardship discharge under § 523(a)(8):

a debtor must show that (1) she cannot maintain a minimal standard of living and repay the loans, (2) additional circumstances exist that illustrate she will not be able to repay the loans for a substantial part of the repayment period, and (3) she attempted to repay the loans in good faith.

*Id.*

While a bankruptcy discharge under § 523(a)(8) allows a student loan debt to be discharged based on a finding of undue hardship, an administrative discharge under the FFELP for a total and permanent disability may be sought:

If a student borrower . . . dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), or if a student borrower who has received such a loan is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, has lasted for a continuous period of not less than 60 months, or can be expected to last for a continuous period of not less than 60 months[.]

20 U.S.C. § 1087(a)(1).

Congress has provided a statutory discharge for student loans under the Bankruptcy Code separate and distinct from the discharge provided by the FFELP; the administrative discharge for permanent and total disability under 20 U.S.C. § 1087(a) is not the exclusive remedy for a debtor who chooses to seek bankruptcy relief. *In re Cagle*, 462 B.R. 829, 831

(Bankr. D. Kan. 2011). A debtor may be entitled to a discharge of his student loans under § 523(a)(8) without qualifying for a total and permanent disability administrative discharge, and vice versa. *Id.* Moreover, the “FFELP and its implementing regulations explicitly provide for bankruptcy as an alternative ground for a student debt discharge.” *Id.* (citing 20 U.S.C. § 1087(b); 34 C.F.R. § 682.402(f)). Thus, a debtor is not precluded from seeking a discharge under § 523(a)(8) solely because he or she did not first pursue an administrative option.

In the Fourth Circuit, a debtor’s attempt (or lack thereof) to explore loan consolidation options or obtain an administrative discharge is considered by the Court when applying the undue hardship analysis under § 523(a)(8). *See Frushour*, 433 F.3d at 402 (citing *Alderete v. Educ. Credit Mgmt. Corp. (In re Alderete)*, 412 F.3d 1200, 1206 (10th Cir. 2005)). “**Although not always dispositive**, it illustrates that the debtor takes her loan obligations seriously, and in doing her utmost to repay them despite her unfortunate circumstances.” *Id.* (emphasis added) (citing *Tirch v. Penn. Higher Educ. Assistance Agency (In re Tirch)*, 409 F.3d 677, 680, 682-83 (6th Cir. 2005)). “Whether a debtor has met the undue hardship standard is a legal conclusion that is based on the debtor’s individual factual circumstances. It is thus a mixed question of law and fact.” *Id.* at 398.

The Court must weigh all of the facts and evidence – including the debtor’s failure to seek an administrative remedy – to determine whether the debtor attempted to repay the loans in good faith. *Id.* at 403 (finding that “Frushour has provided insufficient justifications for refusing to take a simple step that would have allowed her to fulfill her commitments in a manageable way. She has thus failed to satisfy the third *Brunner* factor of manifest good-faith effort to repay her loans.” (citing *Tirch*, 409 F.3d at 683)). While it may be in Lagueux’s

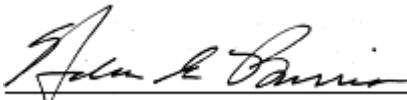
best interest to pursue administrative remedies, his failure to do so does not warrant summary judgment in favor of the USDE regarding his § 528(a)(8) claims.

**IT IS, THEREFORE, ORDERED** that the Motion for Summary Judgment is **DENIED**.

**FILED BY THE COURT**  
**08/15/2019**



Entered: 08/15/2019

  
US Bankruptcy Judge  
District of South Carolina